

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

10/04/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

M. Cearfoss
Deputy

LC 2001-000151

FILED: _____

STATE OF ARIZONA

F TYLER RICH

v.

ALLEN P DOLLARHIDE

MARK S WILLIAMS

PHX MUNICIPAL CT
REMAND DESK CR-CCC

RULING
AFFIRM/REMAND

PHOENIX CITY COURT

Cit. No. 5924365

Charge: 1. DUI-ALCOHOL
2. AC .10 OR HIGHER

DOB: 02-02-1959

DOC: 07-05-2000

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. Section 12-124(A).

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This case has been under advisement since oral argument on September 12, 2001, and this decision is made within 30 days of that date pursuant to Rule 9.8, Maricopa County Superior Court Local Rules. This Court has considered the record of the proceedings from the Phoenix City Court, and the memoranda and arguments of counsel.

The only issue raised by the Appellant concerns whether the trial court erred in denying Appellant's Motion to Suppress. Appellant filed a Motion to Suppress claiming that he had been unlawfully detained by Phoenix Police officers on the evening of July 5, 2000, at 2902 East Fillmore in the city of Phoenix.

In reviewing a trial judge's ruling on a motion to dismiss or suppress after an evidentiary hearing, an appellate court must give deference to the trial court's factual findings, including findings regarding the witnesses' credibility and the reasonableness of inferences drawn by the witnesses.¹ This Court must review those factual findings for an abuse of discretion.² Only when a trial court's factual finding or inference drawn from that finding is not justified or is clearly against reason in the evidence, will an abuse of discretion be established.³

The trial court concluded that there was no seizure of Appellant's person in any form, be it an arrest or an investigative detention pursuant to Terry v. Ohio⁴. The trial judge stated:

It's not a probable cause to stop.
It's not a stop and frisk, because the whole
line of Terry cases is where the officer
feels it's necessary to make a brief

¹ State v. Gonzalez-Gutierrez, 187 Ariz. 116, 927 P.2d 776 (1996); State v. Magner, 191 Ariz. 392, 956 P.2d 519 (App. 1998).

² State v. Rogers, 186 Ariz. 508, 924 P.2d 1027 (1996).

³ State v. Chapple, 135 Ariz. 281, 660 P.2d 1208 (1983); State v. Magner, supra.

⁴ 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

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detention of the body for the purposes of checking for weapons and creating that violation of privacy or expectation to be free to move around. So it's not really that. It wasn't the officer's intent to specifically stop, but to follow and to see what kind of proceeded along, and yet it was obvious in their mind that, wow, this brand new Suburban doesn't belong...

And it's more on the line of a welfare stop than anything. It's kind of a things are not right, they're out of place. It's not something we can ignore...

It was kind of a officer, driver get out and they kind of just meet. The driver clearly, I guess, knew that the officer at least wanted to talk to him, you know, how are you doing, what's going on, why are you here, and let me have some ID, and then things kind of spiral from there. But it just seems such a of minimal intrusion into their expectation of privacy to determine what is kind of an out-of-place situation.⁵

The trial judge also found that the contact between Appellant and the police officers was consensual:

And it does appear to be consensual, because I mean there is no statement by the Defendant, you know, "I don't want to talk to you, I just want to go my way," or turning around and getting back in the vehicle, or saying, "I don't want to show you my ID."

⁵ Reporter's Transcript of November 20, 2000, at pp. 33-35.
Docket Code 512

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It's just a very casual coming-together of the Defendant and the officer, and they start talking and the officer goes uh-oh, you know, we got a DUI.⁶

The trial judge's legal conclusion that there was no seizure or detention of Appellant at all is supported by the record. Phoenix Police Officer Sheehan testified that he followed Appellant's vehicle because "of the amount of drug activity that is in that apartment complex and the related crimes with drug activity."⁷ Officer Sheehan stated that his purposed in approaching Appellant was to get identification from him and determine why Appellant and his passengers were in the apartment complex.⁸ Appellant and the police officers approached one another in the parking lot after stopping their vehicles.⁹ Appellant never indicated in any way to the police officers that he did not want to speak to them, nor did he attempt to walk away.¹⁰ Appellant voluntarily retrieved identification from his vehicle and brought it back to the police officer standing in the parking lot driveway.¹¹ Even though the police officers parked their vehicle behind Appellant's, Appellant was free to leave and could have driven his car around the police vehicle or backed out.¹²

Therefore, this Court concludes that the trial judge did not err in finding no arrest, investigative detention, or seizure of Appellant occurred. Rather, the Phoenix Police officers approached Appellant to ask questions and ask for identification and Appellant willingly complied. The trial judge correctly concluded that the Phoenix Police did not infringe upon Appellant's rights in any way.

⁶ Id. at p. 39.

⁷ Id. at p. 5.

⁸ Id. at p. 13.

⁹ Id. at p. 18.

¹⁰ Id.

¹¹ Id at p. 19.

¹² Id. at p. 9.

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IT IS THEREFORE ORDERED affirming the judgment of the trial court in denying Appellant's Motion to Suppress/Dismiss.

IT IS FURTHER ORDERED affirming the judgments of guilt and sentences imposed.

IT IS FURTHER ORDERED remanding this case back to the Phoenix City Court for all future proceedings.